

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: May 3, 2006

TO : Dorothy L. Moore-Duncan, Regional Director
Region 4

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Electrical Workers IBEW Local 269
(Kay Construction, Inc.)
Case 4-CC-2447

560-2575-6767-2500
560-7540-2000
560-7540-8060-6717

This case was submitted for Advice on whether the Union violated Section 8(b)(4)(i)(ii)(B) by stationing individuals with placards and an inflatable rat on the main highway, 250 feet past the access road to the jobsite.

We conclude that the Region should dismiss the charge, absent withdrawal, because the Union's activity was an appeal to the public too far removed from the neutral employer's site to constitute Section 8(b)(4)(i) inducement, or 8(b)(4)(ii) coercion.

FACTS

Kay Construction (the neutral employer) is the general contractor for a construction project in Bordentown, New Jersey. Neshaminy Electrical (the primary employer) is a nonunion electrical subcontractor. Neshaminy began performing electrical work on the project in mid-November 2005.¹

The jobsite is located on a private access road off Route 68, a four-lane divided highway with a 50 to 55 mph speed limit. To enter, one must travel west on Route 68, then turn right onto the access road. Due to the median separating the highway, it is not possible to turn left onto the access road from eastbound Route 68. The jobsite is in a rural area surrounded by woods, and the access road is gated and locked during nonworking hours.

On December 1, the Union (IBEW Local 269) stationed individuals carrying placards and also an inflatable rat on Route 68 near the entrance to the access road. The placards announced the Union's area standards dispute with Neshaminy and stated that "[n]o one is requested to stop working or refrain from entering this job site." That same day, Kay set up a reserved gate system. It located the neutral gate

¹ Herein all dates are 2005 unless otherwise indicated.

on the left side of the access road near the highway. It located the primary gate at the end of the access road about 200 feet from the highway. Between the neutral gate and the primary gate is a large truck parking area. Passersby on Route 68 have difficulty seeing the primary gate because their view is obstructed both by trees and by trucks in the parking lot.

On December 2, the Union sent the following letter to Kay:

You are hereby notified that it is the intent of the Union's picketing to notify the public that Neshaminy Electric does not pay its employees the area standards with respect to wages and fringe benefits.

In that regard, while we wish to comply with your gate system, the reserved gate that you have established for Neshaminy Electrical is not adequately visible to the public. Please make better arrangements or we will consider other options.

Kay did not respond to the Union's letter or modify its gate system. On December 2 and 5, the Union picketed the primary gate. Also on December 2 and 5, employees of a neutral contractor who apparently saw the Union pickets refused to go to work. The Union engaged in no activity on December 6.

On December 7, 8, and 20, individuals wearing the area standards placards described above returned with an inflatable rat to Route 68. This time, they stationed themselves approximately 225 to 300 feet past (west of) the entrance to the access road. Persons entering the jobsite did not pass the display, and there were no work stoppages. The Union stated that it chose a location that was past the access road so that anyone entering the jobsite would turn before seeing the picketers; only those who drove past the jobsite, i.e. members of the public, would see the picketers.

ACTION

We conclude that the Union's conduct was too far removed from the neutral Kay's site to constitute unlawful inducement or coercive picketing under Section 8(b)(4).

The mere presence of placards and/or patrolling by union agents does not constitute 8(b)(4)(i) inducement or 8(b)(4)(ii) coercion when the surrounding facts make clear

that the union was not seeking to induce neutral employees to refuse to work, or to restrain or coerce the neutral.² Section 8(b)(4)(i) proscribes inducing or encouraging employees of a neutral employer to strike. The words "induce or encourage" are broad enough to include every form of influence and persuasion.³ The provision thus proscribes only communications that "would reasonably be understood by the employees as a signal or request to engage in a work stoppage against their own employer."⁴ Such "signals" include union agents' presence near employee entrances,⁵ or using signs or symbols to advise employees that a labor dispute exists.⁶

² Chicago Typographical Union No. 16 (Alden Press, Inc., 151 NLRB 1666, 1668-69 (1965)).

³ Electrical Workers IBEW Local 501 (Samual Langer) v. NLRB, 341 U.S. 694, 701-702 (1951). See also Service Employees Local 525 (General Maintenance Co.), 329 NLRB 638, 680 (1999) (by targeting tenants and other neutrals, union sought to induce or encourage employees to withhold their services); Laborers, Local 332 (C.D.G., Inc.), 301 NLRB 298, 305 (1991).

⁴ Chicago and Northeast Illinois Dist. Council of Carpenters, 338 NLRB 1104, 1105 (2003), citing Los Angeles Bldg. & Constr. Trades Council (Sierra South Development), 215 NLRB 288, 290 (1974). See also Operating Engineers Local 12 (Hensel Phelps), 284 NLRB 246, 248 n. 3 (1987) ("signal picketing" is the term used to describe activity short of a true picket line that acts as a signal to neutrals that sympathetic action on their part is desired by the union) (citation omitted).

⁵ Iron Workers Pacific Northwest Council (Hoffman Construction), 292 NLRB 562, 562 n. 2, 571-576 (1989), enfd. 913 F.2d 1470 (9th Cir. 1990) (union supporters standing near picket sign at neutral gate signaled employees); Electrical Workers Local 98 (Telephone Man), 327 NLRB 593, 593 and n. 3 (1999) (finding "signal picketing" where, among other things, union agent stood near neutral gate and wore observer sign that flipped over to reveal same sign being used by union picketers at primary gate).

⁶ Teamsters Local 182 (Woodward Motors), 135 NLRB 851, 851 fn. 1, 857 (1962), enfd. 314 F.2d 53 (2d Cir. 1963) (union signaled employees when its agents stuck two picket signs in a snowbank and monitored the employer's facility from a nearby car); Laborers Local 389 (Calcon Construction), 287 NLRB 570, 573 (1987) (union signaled employees by placing signs at or near one or more of the entrances to common situs so that they could be read by anyone approaching

The essential element of 8(b)(4)(ii) coercion is some form of confrontation between union agents and third persons trying to enter or otherwise do business with the targeted facility. In Alden Press,⁷ the Board found that the union's conduct was publicity other than picketing because, although the means used by union agents to publicize its dispute entailed patrolling and the carrying of placards, there was no element of confrontation with the neutral employer's employees, customers, or suppliers. Rather, the patrolling took place at shopping centers and public buildings far removed from the neutral employer's premises, and was not intended to halt deliveries or to cause employees to refuse to perform services.

Relying on Alden Press, we have concluded in several cases that bannering and other conduct were not tantamount to picketing because the activity was located too far from the neutral employer to have the requisite element of confrontation. The fact that potential customers or workers could enter the neutral premises without passing or seeing the Union's banner further prevented any confrontation. In Sherman and Howard,⁸ the union's display of a large banner did not violate 8(b)(4)(ii)(B) because it did not create a confrontation with people trying to enter the neutral employer's office. The banner was located 300 feet from the front entrance to the office building. It was also positioned in such a way that few visitors would have seen it, because they would not have driven past it on their way to the parking garage or walked near it on their way from the parking garage to the building's rear entrance.⁹

them); Construction & General Laborers Local 304 (Athejen Corp.), 260 NLRB 1311, 1319 (1982) (union signaled employees by placing signs on safety cones, barricades, and on jobsite fence).

⁷ 151 NLRB at 1669.

⁸ United Brotherhood of Carpenters & Joiners, Local 1506 (Sherman & Howard, LLC), Case 28-CC-964, Advice Memorandum dated June 21, 2004.

⁹ [FOIA Exemption 5

] ; Pinecrest Construction and Development, Case 32-CC-1510-1, Advice Memorandum dated April 26, 2004 (placement of banner created gauntlet effect because there

In Gore Acoustics,¹⁰ the union did not violate 8(b)(4)(ii)(B) when it displayed banners some 200 yards from the neutral's worksite and 150 yards from its corporate offices. Although the banners were only some 50 feet from a street entrance to the corporate office complex, cars also entered the premises through two other entrances without having to pass the banner. With regard to the 8(b)(4)(i)(B) allegation, there was no evidence that the banners were either intended to or had the effect of inducing a work stoppage of any neutral persons.¹¹

In the instant case, similar to Alden Press, the Union's activity involved no element of confrontation with neutral employer Kay. The Union stationed itself on the main highway some 250 to 300 feet past the turn-off to the access road, so that persons entering the jobsite did not pass the display. There was no evidence that the activity was designed to halt deliveries or to cause employees to refuse to perform services. Rather, the Union chose that location, past the jobsite, to make an appeal only to members of the public. Further, no work stoppages occurred during the period in question.¹² Thus, the evidence indicates that the union activity was intended solely as an

was no alternative access to site, and banner was visibly displayed on a corner through which all consumers doing business with neutral had to pass).

¹⁰ Carpenters Local 971 UBJCA (Gore Acoustics), 32-CA-1524-1, Advice Memorandum dated May 9, 2005.

¹¹ See also UNITE (Amedic System Inc.), Case 12-CC-1244, Advice Memorandum dated August 7, 1998 (locus quo of union's demonstration, some 50 feet from neutral building entrance, apparently was intended to avoid confrontation. The demonstrators carried signs and chanted but did not patrol, and conducted the demonstration after employees had entered the office building and begun work); Carpenters Local 1506 (Universal Technical Institute, Inc.), Case 28-CC-960, Advice Memorandum dated May 5, 2004 (no 8(b)(4)(ii)(B) violation where banner, which was 600 feet away from driveway entrance and separated by a hotel, was too far removed from neutral premises to create confrontation with third persons approaching facility).

¹² See, e.g., Laborers Local 332 (C.D.G., Inc.), 305 NLRB 298, 305 (1991) (finding no 8(b)(4)(i)(B) violation when there was no evidence that work or deliveries were interrupted, no written or oral appeals urging employees or others to cease work or not enter premises, and no members of respondent union worked in building).

information appeal to the public, and not to induce a work stoppage of any neutral persons.

Accordingly, based on the above analysis, the instant charge should be dismissed, absent withdrawal.

B.J.K.